IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.9.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(PD) No.780 of 2006

Sri Ambal Mills Ltd.
Kamanayakan Palayam Road
P.B.No.12 Somanur
Coimbatore rep. by its
Director C.D.Menon
.. Petitioner

vs.

1.S.Clement Paulraj
2.A.Ramasamy
3.S.Kanagaraj
4.K.Subramaniyam
5.A.Shanmugam .. Respondents

Revision Petition filed against the order dated 18.4.2006, passed in C.M.A.No.1/2006 on the file of the Sub Judge, Tiruppur.

For Petitioner : Mr.A.L.Somayaji,
Senior counsel, for
Mr.C.Manohar Gupta, for
M/s.Gupta & Ravi Associates.

For Respondents : Mr.T.R.Mani,
Senior counsel, for
Mr.A.Anbarasan, for R1 & R2.

Mr.Abdul Pari, for R3 to R5.

ORDER:

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This Revision Petition has been filed against the order dated 18.4.2006, passed in C.M.A.No.1/2006 on the file of the Sub Judge, Tiruppur.

2. The defendant company in O.S.No.348/2005 on the file of the District Munsif Court, Palladam is the revision petitioner.

3. The respondents 1 to 5 herein filed the above suit for a permanent injunction restraining the revision petitioner/defendant

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from removing the installed machineries of the company situated at Somanur. Along with the suit the plaintiffs filed I.A.No.1154/2005 for granting an order of temporary injunction.

4. The trial court by order dated 29.12.2005 partly allowed the injunction application by holding that the revision petitioner/defendant should act on the basis of the resolution dated 13.10.2005 marked as Ex.R4 and until the conditions contained in the resolution dated 13.10.2005 are complied with by the company, the revision petitioner/defendant should not remove the installed machineries.

5. Aggrieved by the order dated 29.12.2005, respondents 1 and 2 herein alone (plaintiffs 3 and 4) filed an appeal in C.M.A.No.1/2006 and by order dated 18.4.2006, the Sub-Court, Tiruppur allowed the appeal and granted the interim injunction as prayed for by the plaintiffs. Aggrieved by the order of the 1st appellate court dated 18.4.2006, the defendant in the suit has filed the above revision petition under Article 227 of the constitution of India.

6. Heard Mr.A.L.Somayaji, learned Senior counsel for the revision petitioner and Mr.T.R.Mani, learned Senior Counsel for respondents 1 and 2 and Mr.Abdul Pari, for respondents 3 to 5. I have also gone through the documents and the judgments referred to by them in support of their submissions.

7. The learned Senior Counsel for the revision petitioner submitted that the lower appellate court has considered the issues which are not relevant and reversed the well considered order of the trial court. He further submitted that the suit itself is not maintainable and instead of raising an Industrial Dispute, the plaintiffs have filed the above suit at the instance of some other vested interested persons. He relied on the following judgments to contend that the suit itself is not maintainable:

1) 1976(1)SCC 496 (Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke.
2) 2004(2)L.L.N.1086 (P.Pitchumani v. Mgmt. Of Sri Chakra Tyres,Ltd.)
3) 2005(4) L.L.N. 403 (Jaihind Roadways v. Mah. Rajya M.T. & G.K.U.)
4) 2005(4)L.L.N. 10 (Mgmt. Of G.E. Power Controls India v. S.Lakshmipathy)

8. Per contra, the learned Senior counsel for respondents 1 and 2 submitted that when the lower appellate court has exercised its discretion to grant an order of injunction, the same cannot be set aside in the revision petition filed under Article 227 of the Constitution unless the discretion exercised is perverse.

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9. I have given due consideration to the rival submissions.

10. The trial court has kept in mind the fact that majority of the workmen agreed for a Memorandum of Understanding and on that basis resolutions were passed on 13.10.2005 which were marked as Ex.R4. As per the resolutions, without paying the arrears amount to the workmen by issuing with the cheques and before the cheques were honoured by the bank, the machineries should not be removed and the trial court found that those resolutions were reasonable and the resolutions should be acted upon by the revision petitioner and Ex.R4 dated 13.10.2005 should be considered as part and parcel of the trial court's order dated 29.12.2005. Therefore the trial court granted a limited injunction restraining the revision petitioner from removing the machineries until Ex.R4 was complied with.

11. Only respondents 1 and 2 herein who are plaintiffs 3 and 4 filed an appeal against the order of the trial court, which means plaintiffs 1, 2 and 5 were not aggrieved by the order of the trial court (who are respondents 3 to 5 herein).

12. The lower appellate court held that when the revision petitioner has decided to close the mill they should obtain prior permission and as all the workmen have not signed Ex.R4, it could not have been acted upon by the revision petitioner. The lower appellate court mainly relied on the decision of the Hon'ble Supreme Court reported in 2005 LLR 305 (2005(2) LLN 21) (Oswal Agro Furane Ltd. v. Its Workers Union) to come to a conclusion that if the machineries are removed now, it would affect the rights of the workmen and granted the order of injunction as prayed for by the plaintiffs in the suit.

13. Even though elaborate arguments were advanced by the learned Senior Counsel for the revision petitioner contending that the suit itself is not maintainable in view of Industrial Disputes Act by citing judgments, the maintainability of the suit was not raised in the counter statement filed in I.A.No.1154/2005. Moreover, the revision petitioner was not at all aggrieved by the order of the trial court in granting the limited injunction in I.A.No.1154/2005 and that is why they have not filed an appeal against the order dated 29.12.2005. In such circumstances, the only question that arises for consideration is whether the lower appellate court is right in granting the order of interim injunction as prayed for by the plaintiffs by setting aside the order of the trial court granting limited injunction.

14. The lower appellate court has failed to consider the fact that majority of the workers belonging to all the 6 unions numbering about 330 workers have accepted the resolutions and received payments and only a few of them including respondents 1 and 2 did not receive the payments even though the revision petitioner was

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willing to pay the same. Similarly the lower appellate court has not considered the decision of the Hon'ble Supreme Court in Oswal's case (cited supra) in the proper perspective. The lower appellate court has also failed to advert to the fact that the order of BIFR for winding up of the revision petitioner company has been stayed by the appellate forum and in such circumstances the provisions of the Companies Act will not apply to the present case.

15. If at all, the workers who have not signed the resolution dated 13.10.2005 which was passed on the basis of the Memorandum of Understanding, then they have to raise a dispute before the appropriate forum and the same cannot be agitated before the civil court.

16. The lower appellate court has failed to consider the fact that the trial court has gone into the matter in detail by considering relevant documents and also the welfare of the workers and passed a considerate order granting a limited injunction and also making Ex.R4 as part and parcel of the order. In such circumstances, the lower appellate court ought not to have reversed the order of the trial court. An appeal against an order passed in a petition filed under Order 39 Rules 1 and 2 C.P.C. is not like a regular appeal and if the trial court has passed an order by exercising its discretion properly, the same cannot be interfered with by the appellate court unless the discretion exercised is perverse, unreasonable and considering irrelevant material or not considering the relevant material.

17. In the present case, the trial court has correctly exercised its discretion in granting a conditional order of injunction on the basis of Ex.R4 and the 1st appellate court has erred in law and on facts in reversing the trial court order and granting an absolute injunction as prayed for by the plaintiffs in the suit.

18. Hence, I am setting aside the order of the appellate court dated 18.4.2006 made in C.M.A.No.1/2006 and restoring the order of the trial court dated 29.12.2005 made in I.A.No.1154/2005 in O.S.No.348/2005.

19. In the result, the C.R.P. is allowed. No cost. C.M.P.No.7438/2005 is closed.

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Asst. Registrar.

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Sub Asst. Registrar.

sks

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To

1. The Sub-Judge, Tiruppur.

2. The District Munsif, Palladam.

3. Thr Record Keeper,
V.R. Section,
High Court, Madras.

1 cc to M/s. Gupta & Ravi Advocate, Sr. 44819
1 cc to Mr.S. Abdul Pari, Advocate, Sr. 44841
1 cc to Mr.A.Anbarasan, Advocate, sr. 44842

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